

**Bruce Berline**

**From:** "David P. Ledger" <dledger@carlsmith.com>  
**To:** "Bruce Berline" <bruce@saipanlaw.com>; <Fitzsaipan@aol.com>  
**Cc:** "Elyze J. McDonald" <emcdonald@carlsmith.com>; "June M.C. Borja" <JBorja@carlsmith.com>  
**Sent:** Monday, January 08, 2007 1:21 PM  
**Attach:** Motion for Summary Judgment (1).pdf  
**Subject:** Couture v. American Overseas Marine

Dear Mr. Berline & Mr. Fitzgerald:

Our clients have authorized the filing of the attached motion for summary judgment, which we are prepared to do on or before the dispositive motion deadline of February 1, 2007. However, our clients have instructed us to provide you with a preview of the motion in conjunction with a request that your client reconsider his settlement position. Our clients are willing to consider a settlement offer which takes into account the option that, should the court grant the motion, your client will recover nothing. We do not consider your client's previous offer of \$175,000 to be such an offer.

Additionally, we feel that the motion, even if denied at the district court level, would constitute a particularly good issue for appeal following any jury verdict in favor of Mr. Couture. We believe a district court ruling denying the motion would stand a good chance of being reversed and that such a ruling would result in no recovery for your client notwithstanding a jury verdict in his favor. An appeal would be costly and require 36-48 months to resolve. Our clients are willing to consider a settlement offer which also takes into account that should the district court deny the motion, our clients will appeal after trial, and that a successful appeal would result in no recovery on any jury verdict. Again, we do not consider your client's previous offer of \$175,000 to be such an offer.

Separately, we need to pin down a date for your deposition of our medical expert Dr. Diamond and my deposition of your expert and Mr. Couture's treating physician, Dr. Landstrom. Dr. Diamond's calendar is filling up quickly so you may want to book a date now which can always be cancelled or otherwise changed. Please let me know when Dr. Landstrom is available for deposition. We calculate that a hearing on our motion would be conducted on March 1, 2007. However, given the discovery cutoff is also March 1, 2007, we need to get these depositions scheduled and taken as soon as possible. In the same vein, at your soonest convenience please let me know if you intend to notice and take any other depositions prior to the discovery cutoff.

Thanks & regards,

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